

CHAPTER 41

(HB 46)

AN ACT relating to credit freezes and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 367.365 is amended to read as follows:

- (1) (a) A consumer may elect to place a security freeze on the consumer's consumer report by written request, sent by certified mail, ~~that includes clear and proper identification,~~ to a consumer reporting agency at an address designated by the consumer reporting agency to receive *security freeze requests* ~~such request,~~ *or by the use of telephone, fax, or Web-based or other electronic method that the consumer reporting agency has established to receive security freeze requests. A request made pursuant to this subsection shall include clear and proper identification.* A consumer reporting agency shall place a security freeze on a consumer's consumer report no later than ten (10) business days after receiving a ~~written~~ request *made pursuant to this subsection* for the *placement of a* security freeze from the consumer.
- (b) When a security freeze is in place, information from a consumer's consumer report shall not be released to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's consumer report.
- (2) The consumer reporting agency shall, no later than ten (10) business days after the date the agency receives the request for a security freeze, provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the access to his or her credit file for a specific period of time. In addition, the consumer reporting agency shall simultaneously provide to the consumer in writing the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit file for a specific period while the security freeze is in effect.
- (3) A consumer may request ~~in writing~~ a replacement personal identification number or password *in the same manner utilized in subsection (1) of this section to request the initial security freeze and shall also include clear and proper identification.* ~~The request shall comply with the requirements for requesting a security freeze under subsection (1) of this section.~~ *No later than ten (10) business days after the date the consumer reporting agency receives the request for a replacement personal identification number or password,* the consumer reporting agency shall ~~not later than the tenth business day after the date the agency receives the request for a replacement personal identification number or password,~~ provide the consumer with a new, unique personal identification number or password to be used by the consumer instead of the number or password that was provided under subsection (2) of this section.
- (4) If a third party requests access to a consumer report on which a security freeze is in effect, and this request is in connection with an application for credit, the third party may treat the application as incomplete.
- (5) If the consumer wishes to allow his *or her* consumer report or credit score to be accessed for a specific period of time while a freeze is in place, the consumer shall contact the consumer reporting agency and request that the freeze be temporarily lifted and provide the following:
 - (a) Clear and proper identification;
 - (b) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (2) or (3) of this section; and
 - (c) The proper information regarding the time period for which the report shall be available to users of the consumer report.
- (6) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection (5) of this section shall comply with the request no later than three (3) business days after receiving the request. A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer report or credit score pursuant to subsection (5) of this section in an expedited manner.

- (7) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's consumer report only ~~in the following cases~~:
- (a) Upon *the consumer's* ~~consumer~~ request *made pursuant to subsection (5) or (8) of* ~~as provided in~~ this section; or
 - (b) If the consumer's consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's consumer report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's consumer report.
- (8) A security freeze shall remain in place until the consumer requests that the security freeze be removed, *or the consumer reporting agency has notified the consumer in writing that it is removing the freeze due to a misrepresentation of fact by the consumer pursuant to subsection (7)(b) of this section* ~~but no longer than seven (7) years from the date the security freeze was put in place~~. A consumer reporting agency shall remove a security freeze within three (3) business days of receiving:
- (a) ~~{} A request for removal from the consumer; and, who provides~~
 - (b) Both of the following:
 1. ~~(a)~~ Clear and proper identification; and
 2. ~~(b)~~ The unique personal identification number or password provided by the consumer reporting agency.
- (9) A security freeze does not apply to a consumer report provided to:
- (a) A federal, state, or local governmental entity, including a law enforcement agency, or court, or their agents or assigns;
 - (b) A private collection agency for the sole purpose of assisting in the collection of an existing debt of the consumer who is the subject of the consumer report requested;
 - (c) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;
 - (d) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (5) of this section for the purposes of facilitating the extension of credit;
 - (e) A person ~~{}~~ for the purposes of prescreening as provided by the federal Fair Credit Reporting Act;
 - (f) A consumer reporting agency for the purposes of providing a consumer with a copy of his *or her* own report on *the consumer's* ~~his~~ request;
 - (g) A child support enforcement agency;
 - (h) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple credit reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer report by another consumer reporting agency;
 - (i) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;
 - (j) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;

- (k) Any person or entity using a consumer report in preparation for a civil or criminal action, or an insurance company in investigation of a claim; or
 - (l) Any insurance company for setting or adjusting a rate or underwriting for property and casualty insurance purposes.
- (10) A consumer reporting agency may impose a reasonable charge on a consumer for initially placing, temporarily lifting, or removing a security freeze on a consumer file. The amount of the charge may not exceed ten dollars (\$10). On January 1 of each year, a consumer reporting agency may increase the charge for placing a security freeze ~~to ten dollars~~. The increase shall be based proportionally on changes to the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest twenty-five cents (\$0.25). ~~An exception shall be allowed whereby the~~ consumer **shall not** ~~will~~ be charged **any fee** ~~zero dollars~~ by the consumer reporting agency **for** placing the security freeze if the consumer is a victim of identity theft and, upon the request of the consumer reporting agency, provides the consumer reporting agency with a valid police report.
- (11) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer report without sending a written confirmation of the change to the consumer within thirty (30) days of the change being posted to the consumer's file:
- (a) Name;
 - (b) Date of birth;
 - (c) Social Security number; and
 - (d) Address.

Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

- (12) Any person who willfully fails to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer in an amount equal to the sum of:
- (a) Any actual damages sustained by the consumer as a result of the failure;
 - (b) Any liquidated damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000);
 - (c) Any punitive damages as the court may allow; and
 - (d) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- (13) Any person, other than the named individual or individuals in the report, who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or one thousand dollars (\$1,000), whichever is greater.
- (14) Any person who is negligent in failing to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer in an amount equal to the sum of:
- (a) Any actual damages sustained by the consumer as a result of the failure; and
 - (b) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- (15) Nothing in KRS 367.363 to 367.365 shall be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General authorized under any other provision of law to bring or seek redress for persons that violate KRS 367.363 to 367.365.

➔Section 2. KRS 367.3645 is amended to read as follows:

- (1) For the purposes of this section:

- (a) "Protected person" means an individual who is under sixteen (16) years of age at the time a request for the placement of a security freeze is made, or who is an incapacitated person or other person for whom a guardian or conservator has been appointed;
 - (b) "Record" means a compilation of information which:
 - 1. Identifies a protected person;
 - 2. Is created by a consumer reporting agency solely for the purpose of complying with this section; and
 - 3. Is not created or used to consider the protected person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;
 - (c) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected person; and
 - (d) "Sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected person, including but not limited to:
 - 1. A court order granting custodianship, guardianship, or conservatorship;
 - 2. A birth certificate;
 - 3. A lawfully executed and valid power of attorney; or
 - 4. A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected person.
- (2) A consumer reporting agency shall place a security freeze on a protected person's record or ~~consumer credit~~ report if:
- (a) The consumer reporting agency receives a request from the protected person's representative for the placement of the security freeze; and
 - (b) The protected person's representative:
 - 1. Submits the request to the consumer reporting agency at the address designated by the consumer reporting agency to receive the request;
 - 2. Provides to the consumer reporting agency clear and proper identification of the protected person and the representative;
 - 3. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected person; and
 - 4. Pays to the consumer reporting agency a fee as prescribed in subsection (8) of this section.
- (3) If a consumer reporting agency does not have a file pertaining to a protected person when the consumer reporting agency receives a request pursuant to subsection (2) of this section, the consumer reporting agency shall create a record for the protected person.
- (4) Within thirty (30) days after receiving a request pursuant to this section, a consumer reporting agency shall place a security freeze on the protected person's record or ~~consumer credit~~ report.
- (5) Unless a security freeze is removed pursuant to subsection (7) or (10) of this section, a consumer reporting agency may not release the protected person's ~~consumer credit~~ report, any information derived from the protected person's ~~consumer credit~~ report, or any record created for the protected person.
- (6) A security freeze that is placed on a protected person's record or ~~consumer credit~~ report placed under this section remains in effect until either:
- (a) The protected person or the protected person's representative requests that the consumer reporting agency remove the security freeze pursuant to subsection (7) of this section; or
 - (b) The security freeze is removed pursuant to subsection (10) of this section.
- (7) (a) To remove a security freeze for a protected person, the protected person or the protected person's representative shall submit a request for the removal of the security freeze to the consumer reporting agency at the address designated by the consumer reporting agency to receive the request, and pay a fee as prescribed in subsection (8) of this section. In addition:

1. If the protected person requested the removal of the security freeze, the protected person shall provide to the consumer reporting agency ~~both~~^{either} of the following:
 - a. Proof that the protected person's representative no longer has sufficient proof of authority to act on behalf of the protected person; ~~and~~^{or}
 - b. Clear and proper identification of the protected person; and
 2. If the protected person's representative requested the removal of the security freeze on behalf of the protected person, the protected person's representative shall provide to the consumer reporting agency both of the following:
 - a. Clear and proper identification of the protected person and the representative; and
 - b. Sufficient proof of authority to act on behalf of the protected person.
- (b) Within thirty (30) days after receiving a request to remove a security freeze placed pursuant to subsection (2) of this section, the consumer reporting agency shall remove the security freeze for the protected person.
- (8) A consumer reporting agency may charge a fee for each placement or removal of a security freeze on a protected person's record or ~~consumer~~^{credit} report. The fee may not exceed ten dollars (\$10).
- (9) Notwithstanding subsection (8) of this section, a consumer reporting agency may not charge any fee under this section if:
- (a) The protected person's representative provides a copy of a police report to the consumer reporting agency alleging that the protected person has been a victim of an offense involving identity theft; or
 - (b) A request for the placement or removal of a security freeze is for a protected person who is under sixteen (16) years of age at the time of the request and the consumer reporting agency has a ~~consumer~~^{credit} report pertaining to the protected person.
- (10) A consumer reporting agency may remove a security freeze for a protected person or may delete a protected person's record if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected person or the protected person's representative.
- (11) Any person who willfully fails to comply with any requirement imposed under this section with respect to any **protected person**~~consumer~~ is liable to that **person**~~consumer~~ in an amount equal to the sum of:
- (a) Any actual damages sustained by the consumer as a result of the failure;
 - (b) Any liquidated damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000);
 - (c) Any punitive damages as the court may allow; and
 - (d) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- (12) Any person, other than the named individual or individuals in the report, who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or requests the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or one thousand dollars (\$1,000), whichever is greater.
- (13) This section does not apply to a protected person's ~~consumer~~^{credit} report or record provided to:
- (a) A federal, state, or local governmental entity, including a law enforcement agency, or court, or their agents or assigns;
 - (b) A private collection agency for the sole purpose of assisting in the collection of an existing debt of the consumer who is the subject of the consumer report requested;
 - (c) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account

or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

- (d) A person, for the purposes of prescreening as provided by the federal Fair Credit Reporting Act, 15 U.S.C. secs. 1681 et seq.;
- (e) A consumer reporting agency for the purposes of providing a consumer with a copy of his or her own report on his or her request;
- (f) A child support enforcement agency;
- (g) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple credit reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer report by another consumer reporting agency;
- (h) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;
- (i) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;
- (j) Any person or entity using a consumer report in preparation for a civil or criminal action, or an insurance company in investigation of a claim; or
- (k)
 - 1. Any insurance company for setting or adjusting a rate or underwriting for property and casualty insurance purposes; or
 - 2. Any consumer reporting agency database or file which consists solely of consumer information concerning, and used solely for:
 - a. Criminal record information;
 - b. Personal loss history information;
 - c. Fraud prevention or detection;
 - d. Employment screening; or
 - e. Tenant screening.

➔Section 3. Whereas the prevalence of security breaches containing sensitive identifying information of consumers is on the rise, as is the accompanying risk of identity theft for those consumers exposed as a result of these breaches, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor March 30, 2018.